*THE HONOURABLE SRI JUSTICE P.S.NARAYANA

+W.P. NO.11563 OF 2006

%07.08.2006

Guda Vinoda

..Petitioner

Vs.

$ Government of A.P.,
Housing Municipal Admn., & U.D.Department
Rep by Principal Secretary, Hyd
and others

Respondents.

!Counsel for the Petitioner : G.V.L.N.Murthy

^Counsel for the Respondent No.1: G.P.for Municipal Admn.,
Counsel for the Respndent NO.2& 3 : P.Durga Prasad.

<Gist :

>Head Note:

?Cases Referred:

[1] 2000(2) ALD 411
2.AIR 1989 SC 860

THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.11563 of 2006

Date: 07.08.2006

Between :-

Guda Vinoda .. Petitioner

And

Government of A.P.,
Housing Municipal Admn., & U.D.Department
Rep by Principal Secretary, Hyd
and others .. Respondents

THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.11563 of 2006

ORDER:

1. Heard Sri G.V.L.N.Murthy, the counsel representing the writ petitioner, Sri Durga Nageswar Rao, the counsel representing R2 and R3 and Sri Venkat Reddy, the counsel representing R.5.

2. Sri G.V.L.N.Murthy the learned counsel representing the writ petitioner had taken this Court through the affidavit filed in support of the writ petition and also ventilated the actual grievance of the writ petitioner and would maintain that though certain factual aspects had been narrated in para-3 of the affidavit filed in support of the writ petition what is being prayed for is that respondents 2 and 3 to act in accordance with law in relation to such constructions made by 5th respondent in deviation to the sanctioned plan and nothing more. Hence, in the facts and circumstances of the case and also in the light of the undertaking filed by the 5th respondent that she will not violate

the sanctioned plan, the petitioner need not be driven to a civil Court. The learned counsel also pointed out to certain facts and the news item and would maintain that virtually because of the support of a Corporator, the problems are precipitated.

3. Sri Durga Nageshwar Rao however had taken this Court through the contents of the counter affidavit and would maintain that there appears to be some problem between the Mayor and Corporator and also would maintain that in the facts and circumstances of the case there appears to be deviations in the sanctioned plan in relation to the constructions of both the petitioner and the 5th respondent and would maintain that the respondents 2 and 3 would proceed in accordance with law.

4. Sri Venkat Reddy, the learned counsel representing the 5th respondent placed strong reliance on the decision of this Court in ***I.Venkat Rao Vs Municipal Corporation of Warangal and another***[1] and would maintain that in the light of several factual aspects, which had been narrated in para 3 of the affidavit filed in support of the writ petition it would be just and proper that the writ petitioner be driven to a Civil Court inasmuch as this dispute would not fall within the realm of the public law.

5. Heard the counsel.

6. The writ petition is filed for a writ of mandamus declaring the inaction of the second respondent – Municipal Commissioner, Warangal Municipal Corporation, Warangal in acting as per its Lr.No.G2/TP/84/06 & UC-6/TP/VII/05-06 dated 20-4-2006 in demolishing the unauthorized and deviated constructions at 1st Floor of H.No.1-8-252, Balasamudram, Hanamkodna, Warangal district made by the 5th respondent and solve the health hazard problem of the petitioner in encountering the latrine water and garbage etc affecting the pure water in the sump of the petitioner, as offending the fundamental rights of the petitioner, contrary to the provisions of Section 452 of Hyderabad Municipal Corporation Act 1955 and the rules made there under and consequently direct the respondents to act in accordance with law and to pass such other suitable order.

7. It is stated in the affidavit filed in support of the writ petition that the petitioner purchased an old house with A.C.sheets roofing, situated in an area of 138 sq.yards with House No.1-8-252 New, with Plinth area of 244.37 sq.feet vide registered Sale Deed dated 25.2.2002 document No.943/2002 of Joint Sub-Registrar, Warangal for a valid consideration of Rs.1,94,500 from one Smt.T.Vedavathi of

Balasamudram, Hanamkonda and the petitioner had been in continuous possession and enjoyment of the property and living with her husband and family. It is stated that while so her neighbor Smt.T.Vedavathi, the 5th respondent herein obtained permission from the Warangal Municipal corporation by submitting a plan for construction of the 1st floor as long back as on 30.3.2000 at H.No.1-8-252. But she had chosen to construct the 1st floor in the year 2005-2006. It is also stated that she had deviated the construction by covering 3 feet balcony in to plinth area and opened windows towards the property of the petitioners and due to above construction, the latrine water is falling in the water sump adjacent to the compound wall and throwing garbage etc through the window and the drinking water preserved in the sump becoming polluted causing health hazard and nuisance. It is stated that the petitioner brought the same to the notice of her neighbor about the inconvenience caused to them but she did not heed to the words of the petitioner and she gave a police complaint and the Sub Inspector of Police visited the area and found the fact and the inconvenience caused to the petitioner and asked the 5th respondent to remove the unauthorized constructions and gave sufficient time, but the 5th respondent did not remove the unauthorized

constructions. It is also stated that when the petitioner approached the Sub Inspector of Police, he asked the petitioner to give a complaint to Municipal Corporation, then she gave complaint on 12.12.2005 to the authorities of Warangal Municipal Corporation. As there was no response she again gave a complaint on 29.1.2006 to the Municipal Corporation Warangal with a request to do justice. It is also stated that the Town Planning Officials visited the area and found the deviations and advised the 5th respondent to remove the unauthorized construction. As the 5th respondent did not care to remove the unauthorized construction, the Warangal Municipal Corporation issued a notice under Section 452 of the Hyderabad Municipal Corporation Act 1955 on 4.3.2006. It is learnt that the 5th respondent in stead of removing the deviations, had paid an amount of Rs.2,095/- towards planning fee on 7.3.2006 for regularizing the deviations and unauthorized constructions, though there was no such provision. The authorities of Warangal Municipal Corporation did not accept the same and asked the 5th respondent to remove the unauthorized constructions but in vain and thus the Warangal Municipal Corporation authorities decided to remove the said deviated constructions. On 12.4.2006 the City Planner and other staff of the Warnagal Municipal

Corporation, had partly demolished the balcony deviations. While so, the 5th respondent requested the authorities that she herself will remove the balance deviations, for which the authorities agreed and left the site. It was also further stated that the 5th respondent in stead of removing the unauthorized construction had chosen to take the help of a Corporator and again started to reconstruct the demolished portions. However, the Municipal authorities noticed the same and decided to demolish the unauthorized and deviated constructions and the Commissioner of Warangal Municipal Corporation addressed a letter No.G2/TP/8406 & UC-6/TP/VII/05-06 dated 20.4.2006 to the station House Officer, Subedari Police Station, Hanamkonda stating that it was proposed to demolish the unauthorized constructions on 20.4.2006 at 4.00 PM and the Station House Officer was requested to depute sufficient police assistance to maintain law and order problem at the time of executing the above demolition work. The City Planner, Town Planning Officers and others staff were also directed to execute the above demolition work. On 20.4.2006, the Municipal staff came to the site but they were prevented from executing the demolition work due to political intervention. It is also stated that while the Mayor of the Warangal Municipal Corporation is willing to remove the unauthorized

and deviated construction, one Corporator strongly opposed the same. The political differences between the Mayor and said Corporator was also reported in news papers and one such news item dated 22.4.2006 as reported in Warangal District edition of Eenadu had been enclosed. It is stated that due to political intervention and due to political influence exercised by the 5th respondent the Municipal authorities kept quiet and left the site on 20.4.2006 and also on 21.4.2006 by waiting sufficiently. It was also stated that the political differences between them was apparently solved leaving the petitioner to her plight. In the said circumstances, the petitioner approached this court.

8. The undertaking filed by the 5th respondent also was placed before this Court which reads as hereunder:

> " I submit that my said construction is meant for residential purpose. I undertake to complete my construction without violating the terms of grant of permission and the sanctioned plan. In case my construction and set of the premises, is found to be violative of the sanctioned plan or offending the zoning regulations, I render myself and my construction liable for the action to be taken by the Municipal Corporation for any such violation."

9. Respondent Nos.2 and 5 filed counter affidavits resisting the same. In the counter affidavit filed by the second respondent it is averred that it is true that Smt.T.Vedavathi obtained building

permission vide Roc.No.209 dated 30.3.2000 at House No.1-8-252, Balasamudram, hanamkonda. It is stated that respondent No.5 constructed the said building against the sanctioned plan by deviating and closed the balconies with wall and erected the windows towards the property of the petitioner and the house of the respondent No.5 is not completed and no inmates are residing in the said house. It is denied that due to the above said construction of deviation the latrine water is falling in the water sump adjacent to the compound wall and throwing garbage through the windows and the drinking water preserved in the sump being polluted causing health hazard and the nuisance. It is also stated that respondent No.2 does not know about the petitioner informed to the 5th respondent with regard to the inconvenience and the lodging of complaint before the police and the Sub Inspector of Police visited the spot and found the fact and asked the respondent to remove the unauthorized construction and that sufficient time was given, but the 5th respondent did not remove the construction which was violated or deviated the building rules against the sanctioned plan and that the Sub Inspector of Police advised the petitioner to give a complaint before the Municipal Corporation, warangal, hence denied the same. It is also stated that basing on the

complaint of the petitioner dated 24.1.2006, the second respondent issued notice to the 5th respondent vide U.C.No.6/TP/VII/05-06, dated 4.3.2006 under Section 452 of the Hyderabad Municipal Corporation Act 1955 to remove the deviation portion against the sanctioned plan, but the 5th respondent refused to take the said notice, hence the same was affixed to the walls of her house on 4.3.2006 by conducting panchanama. But instead of removing the deviation portion the 5th respondent paid Rs.2,095/- vide receipt No.08666 dated 7.3.2006 towards planning fee for the deviation portion for regularization of the said area. It is also stated that there is no provision to regularize and hence the same was rejected by the second respondent. It is also stated that the 5th respondent settled the matter with the petitioner and after giving sufficient time and opportunity to the petitioner, this respondent removed the windows which were existing towards the house of the petitioner on 12.4.2006 and the 5th respondent at the time of demolition requested that she will remove the remaining portion but she did not remove the same. It is also stated that on inspection of Municipal staff it was found that the 5th respondent had been constructing the windows with the support of the political leaders and that the political leaders are obstructing to remove the deviation and

therefore, without police aid it is not possible to remove the said deviation part of the 5th respondent house. It is also averred that the respondent authority prepared to demolish the deviated portion and addressed a letter to the Station House Officer, Subedari vide letter No.G2/TP/8406, dated 20.4.2006 requesting to assist at the time of execution of demolition work on 20.4.2006 at 4.00 P.M. for maintaining law and order. It is also stated that the demolition work could not be executed due to prevention of political intervention and at that place law and order problem arose. It is also stated that the said incident was published in the daily news papers and the 5th respondent lodged a complaint against the staff of Municipal Corporation, before the Station House Officer, Subedari. It is also stated that the Municipal Corporation is prepared to execute the demolition of deviated portion of the 5th respondent, but meanwhile the petitioner approached this Court and that the respondent authority is ready to demolish the deviation portion of the said house after passing of order by this Court.

10. It was also further averred that the respondent attempted number of times and also requested to remove the deviation portion of the house of the 5th respondent, but some of the local political leaders are creating law and order problems in support of the 5th respondent. It is

also stated that after passing the orders in the above writ petition by this Court, the respondent authority would take action by implementing the orders. It is also averred that the petitioner constructed her house without obtaining permission from the respondent authority and the said construction is unauthorized. It is also stated that the petitioner purchased her property from the 5th respondent and when the petitioner purchased the said property the alleged construction of the 5th respondent was already in existence and that the petitioner did not complain when there were good relations between her and the 5th respondent. It is further averred that the house of the petitioner is also unauthorized and the 5th respondent constructed the house with deviation and the same will be liable for demolition.

11. The 5th respondent filed counter affidavit wherein it was stated that the petitioner and her family members maintained cordial relationship with the 5th respondent till June 22005 and thereafter petitioner requested to sell rest of the building owned by this respondent, but she refused to sell. Thereafter the petitioner having bore grudge against her started harassing her and her family members for silly reasons. It is also stated that without any show cause notice to the 5th respondent, the second respondent officials on 12.4.2006 came

to her residence, broke open the lock of the residence and demolished the wall illegally while they were out of station. On 14.4.2006 when they came to the residence, the tenant explained to her about the incident, the petitioner and her husband abused her in vulgar language and threatened to kill her. Thereafter she made complaint on 15.4.2006 and basing on the complaint police registered a case for the offences under section 448, 427 and 506 read with 34 IPC and investigation is pending. It is also stated that the alleged notice dated 4.3.2006 issued under Section 452 of the Hyderabad Municipal Corporation Act 1955 is not served on her and no explanation was called from her. It is also stated that second respondent filed counter affidavit stating that she refused to receive the said notice, then the same was pasted to the wall of her house on 4.3.2006, but the same is not correct. It is also stated that the second respondent never issued show cause notice under section 452 or Section 636 of the Hyderabad Municipal Corporation Act 1955. It is also specifically stated that the writ petition is not maintainable since the petitioner is having an effective alternative remedy to approach the civil Court.

12. Strong reliance is being placed on a decision of this Court in ***I.Venkat Rao's Case (1 supra)***. In the aforesaid decision, the learned

Judge of this Court at para-6 observed as hereunder:

> " I have heard the learned Counsel for the petitioner, Sri Bankatlal Mandhani. He vehemently contended that as held by this Court in *Om Prakash Gupta v. State of Andhra Pradesh (1997(2) ALD 115)* any member of a public can approached this Court under Article 26 of the Constitution and seek appropriate reliefs. It is well settled that a neighbour who is aggrieved by the construction allegedly in contravention of the building plan has no locus standi to question the same in a public law remedy. If the neighbour is aggrieved with reference to the deprivation of corporeal rights as well as incorporeal rights – deprivation of property, violation of right to privacy etc., the only remedy is by way of a civil suit for declaration of easementary rights and consequential injunction. The reasons are two. In either way, whether a person is deprived of the property due to the encroachment or a person's right to privacy is violated by virtue of illegal constructions preventing free light and air into the house; these are matters for elaborate evidence. This Court under Article 226 of the Constitution decides the matters based on affidavits and it is well neigh impossible to dwell into questions of fact which are in serious dispute. Therefore, the judgment of this Court relied on by Sri Mandhani which categorically states that the right of the public to approach the Court under Article 226 is acceded, cannot be extended where a private person is aggrieved by the action of another private person that too when no proper material is placed before the Court that the construction made is grossly subverting the public interest. As held by the Supreme Court in *Rajanath Enterprises v. S.K.Sharma (AIR 1989 SC 860)* all illegal constructions need not be demolished. The acid test to be applied is whether illegal constructions if any grossly subvert public interest and grossly contrary to the public interest. In the said case, the Supreme Court even regularized huge extent of floor space which was admittedly contrary to FSI Regulations. In this connection, it is useful to extract the following passage from the above judgment:
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> "…in the absence of any evidence of public safety being in any manner endangered or the public or a section of the public being in any manner inconvenienced by reason of the construction of the building, whatever may be the personal grievance of the 1st respondent, the High Court was not justified, at the instance of the 1st respondent claiming himself

to be a champion of the public cause, in ordering the demolition of any part of the building, particularly when there is no evidence whatsoever of dishonesty or fraud or negligence on the part of the builder. See the principles stated by Sabyasachi Mukharji, J in *Ramsharan Autyanuprasi v. Union of India (1988 (2) Scale 1399 = AIR 1989 SC 549),* and by Khalid, J., in *Sachidanand pandey V. State of West Bengal (1987 (2) SCC 295 = AIR 1987 SC 1109).”*

13. In ***M/s.Rajanatha Enterprises v. S.K.Sharma***[2] it was observed at para-20 as hereunder:

“ We have perused the records and considered the arguments on both sides. We are not satisfied that, on the facts and in the circumstances of this case, the learned Judges of the Division Bench of the High Court were justified in permitting and much less directing the demolition of the 6th floor. On the facts found, there is neither justice nor equity in authorising the demolition. The total site area being 15517 sq. ft. as found by the High Court, and the permissible FAR in relation 'to the site area being 38792 sq. ft., as against the determined area of 45974 odd sq. ft., the excess FAR is only 7182 sq. ft. When an area of 4500 sq. ft. occupied by the school is excluded from the excess area of 7182 sq. ft. by reason of the school having vested in the Government upon the completion of the building, the actual excess area in the possession and enjoyment of the appellant is only 2682 sq. ft. The permissible limit of compounding being 5 per cent of the permissible FAR, which works out to 1940 sq. ft. the actual area of deviation outside the permissible compounding Unlit seems to be not larger than 742 sq. ft. In the circumstances, in the fight of what the Commissioner says about the practice of the Corporation in regard to the commencement certificate and in the absence of any evidence of public safety being in any manner endangered or the public or a section of the public being in any manner inconvenienced by reason of the construction of the building, whatever may be the personal grievance of the 1st respondent, the High Court was not justified, at the instance of the lst respondent claiming himself to be a champion of the public cause, in ordering the demolition of any part of the building, particularly when there is no evidence whatsoever of dishonesty or fraud or negligence on the part of the builder. See the principle stated by

> Sabyasachi Mukharji, J. in Ramsharan Autyanuprasi v. Union of India, (1988) 2 Scale 1399 : (AIR 1989 SC 549), and by Khalid, J. in Sachidanand Pandey v. State of West Bengal, (1987) 2 SCC 295 : (AIR 1987 SC 1109). Accordingly, we set aside the impugned order of the High Court insofar as it permits or directs the demolition of the 6th floor and affirm the rest of the order. The appeal is allowed in the above terms. "

14. It is no doubt true that when disputed questions of fact are involved and predominantly when the dispute is between two neighbours and the inaction by the local bodies like Gram Panchayat, Municipality or Municipal Corporation, these are being complained of it may be just and proper to drive such parties to have redressal of their grievance before the competent civil Court. Such disputes normally cannot be permitted to be agitated before a writ court. On the factual details which had been narrated though certain aspects had been specifically averred at para-3 of the affidavit filed in support of the writ petition it appears that the Municipal Corporation, Warangal had taken some action in this regard and while proceeding with further action on the request of the 5th respondent the same was left over and subsequent thereto there was some intervention by the Corporator and in view of the same, it appears that the same could not be carried out to its logical end. It is also true that always in the light of the private grievances, the Municipal Corporation is not bound to interfere with every unauthorized structure especially in the light of the view

expressed in ***M/s.Rajanath Enterprises' case (2 supra)*** .

15. Whatever the reason may be, now the 5th respondent is coming with a version that she was not put on notice and proper procedure is not being followed and in her absence some demolition activity had taken place and the same was informed to her by her tenant. Be that as it may, in view of the facts and circumstances, this Court is of the considered opinion that the writ petition be disposed of directing the respondents 2 and 3 to put the writ petitioner and the 5th respondent on notice in accordance with the provisions of the Hyderabad Municipal Corporation Act 1955, within two weeks from the date of the receipt of a copy of this order, permit the 5th respondent to file her objections, if any, consider the objections and further proceed, if respondents 2 and 3 are otherwise satisfied that it is a fit case where further proceedings are to be taken up in accordance with the provisions of Hyderabad Municipal Corporation Act 1955.

16. With the above observation, the writ petition is disposed of. No order as to costs.

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07.8.2006.

Note:
Issue c.c. in 3 days.

B/o.
Mdaa.

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[1] 2000(2) ALD 411

[2] AIR 1989 SC 860